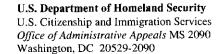
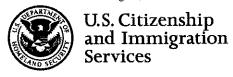
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BZ

FILE:

Office: TEXAS SERVICE CENTER

Date:

DEC 0 2 2010

IN RE:

Petitioner:

Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section

203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established his eligibility for the exclusive classification sought.

I. Law

Section 203(b) of the Act states, in pertinent part, that:

- (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
 - (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
 - (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
 - (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
 - (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).



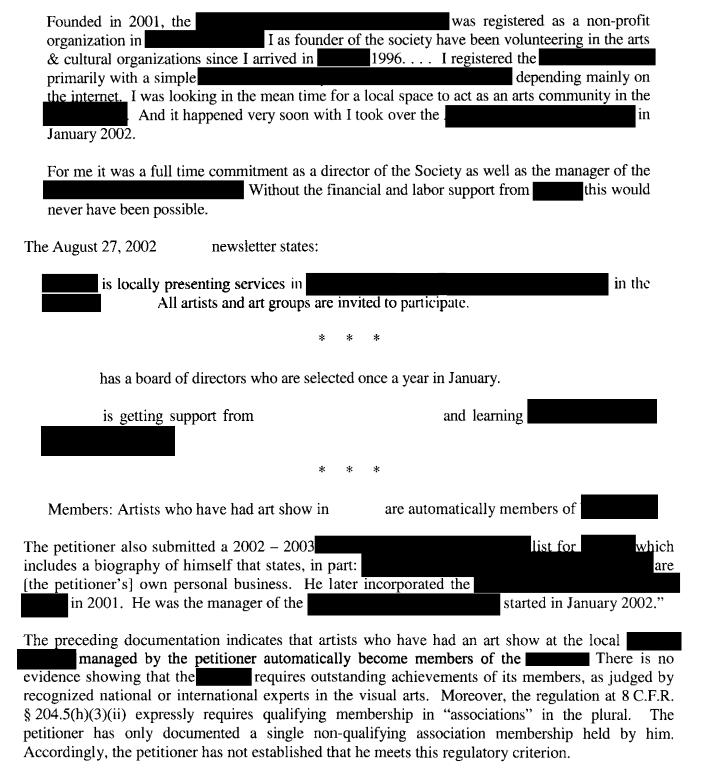
This petition, filed on July 27, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an artist. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).²

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner did not initially claim to meet this criterion. On appeal, the petitioner submits a September 13, 1997 letter to him from the
stating:
On behalf of the your submission to our Art Rental jurying titled tied for first place in the jurying. Both of the jurors were very impressed with all your submissions, but this piece was particularly intriguing and impressive.
The first prize and second prize have a combined monetary value of which we have divided equally. Please find a cheque enclosed. Congratulations!
The preceding first place prize from the reflects local recognition rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. There is no documentary evidence demonstrating that the petitioner's prize is recognized beyond the presenting organization and therefore commensurate with a nationally or internationally recognized prize or award for excellence in the visual arts field. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) expressly requires evidence of qualifying <i>prizes</i> or <i>awards</i> in the plural. The petitioner has documented his receipt of only a single non-qualifying prize. Accordingly, the petitioner has not established that he meets this regulatory criterion.
Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
The petitioner submitted documentation showing that he and four others in incorporated a society in a centitled the centitled the centitled the centification of the centitled and a newsletter dated August 27, 2002. The submitted documents identify the petitioner as founder, president, and a member of the board of directors of the centification on November 29, 2002 includes a prepared by the petitioner stating:

² The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.





Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought.



Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

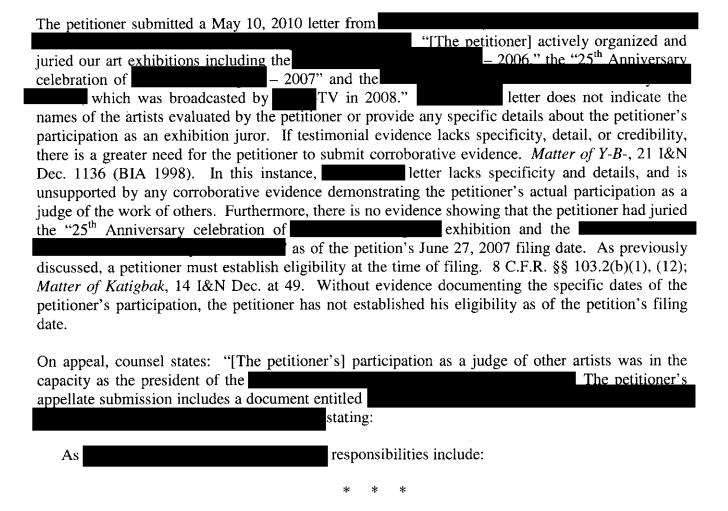
The petitioner submitted material about him in both the January/February 1998 and the March/April
2004 issues of the state, a free The petitioner also
submitted a September 13, 2002 article entitled
in the occasion of the September 11
a free
Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document
containing foreign language submitted to USCIS shall be accompanied by a full English language
translation that the translator has certified as complete and accurate, and by the translator's
certification that he or she is competent to translate from the foreign language into English. The
English language translation accompanying the article in was not certified by
the translator as required by 8 C.F.R. § 103.2(b)(3). Further, there is no documentation (such as
circulation evidence) showing that
major trade publications or other major media in or any other country.
• • •
The petitioner submitted a May 11, 2010 letter from a television reporter for the
The petitioner submitted a May 11, 2010 letter from a television reporter for the stating that she interviewed the
petitioner on June 19, 2008 and that his interview was broadcast on a program entitled
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stating that she interviewed the petitioner on June 19, 2008 and that his interview was broadcast on a program entitled on June 26, 2008. The preceding televised interview post-dates the petition's June 27, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); <i>Matter of Katigbak</i> , 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly,
stating that she interviewed the petitioner on June 19, 2008 and that his interview was broadcast on a program entitled on June 26, 2008. The preceding televised interview post-dates the petition's June 27, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); <i>Matter of Katigbak</i> , 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's June 2008 televised interview in this proceeding.
stating that she interviewed the petitioner on June 19, 2008 and that his interview was broadcast on a program entitled on June 26, 2008. The preceding televised interview post-dates the petition's June 27, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); <i>Matter of Katigbak</i> , 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's June 2008 televised interview in this proceeding. Nevertheless, there is no supporting evidence establishing that the
stating that she interviewed the petitioner on June 19, 2008 and that his interview was broadcast on a program entitled on June 26, 2008. The preceding televised interview post-dates the petition's June 27, 2007 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); <i>Matter of Katigbak</i> , 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's June 2008 televised interview in this proceeding.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.





- Work with Art Programs director in scheduling and organizing events and selecting artists' work to exhibit.
- Work with Art Programs director in formatting call for artistic submissions and adjudicating submitted works to select those appropriate to the gallery's events and goals.
- Act as primary director at in the selection and types of works exhibited.

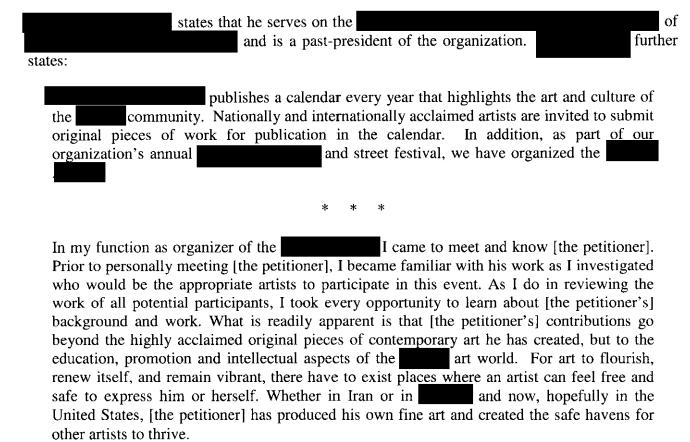
The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others" in the field. The undated, self-serving list of responsibilities prepared and submitted by the petitioner on appeal does not equate to evidence of his actual participation as judge of the work of others. For instance, the list does not specify the art work judged by the petitioner, the names of the individuals whose work he evaluated, and the date the selections were performed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Page 9

According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, there is no documentary evidence showing that the petitioner had actually participated as a judge of the work of others at the time of filing the petition. Moreover, the phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually, as specified by 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance involving routine duties inherent to one's job responsibilities. Additional deficiencies pertaining to the submitted documentation will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

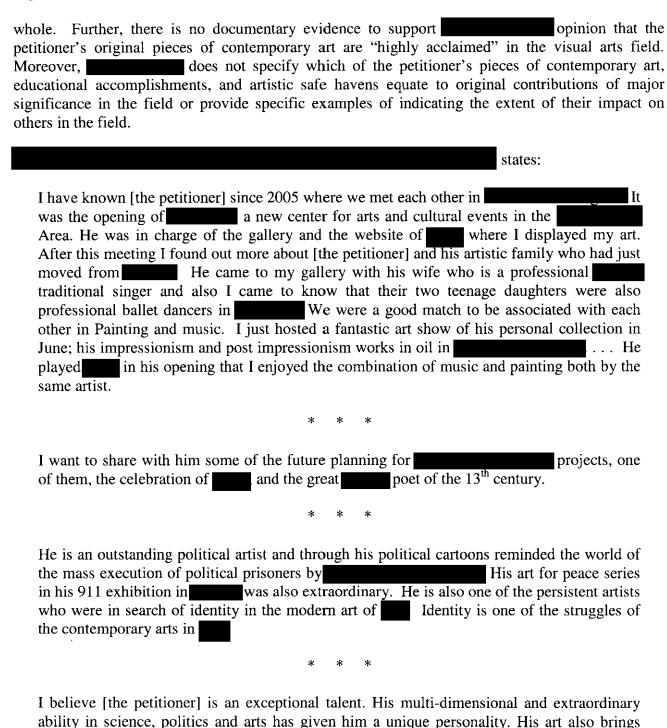
Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted various letters of support and documentation pertaining to his art work.



We note that arranging for the display of one's work is inherent to the visual arts. It does not follow that that every visual artist who successfully exhibits his own work or facilitates the exhibition of others' artwork has inherently made an original contribution of major significance to the field as a



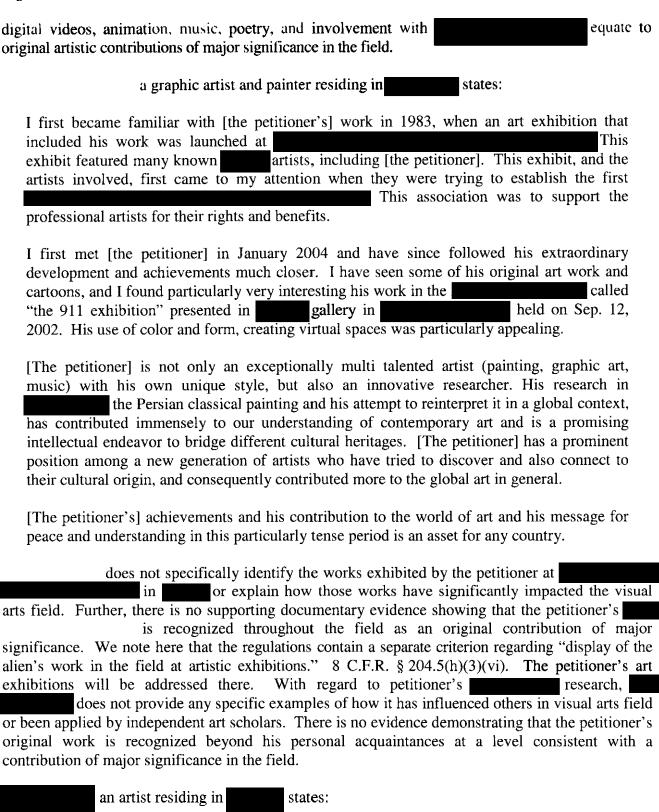


describes the petitioner's activities and art projects, but there is no supporting evidence showing that the petitioner's oil paintings, political cartoons, series, calligraphy,

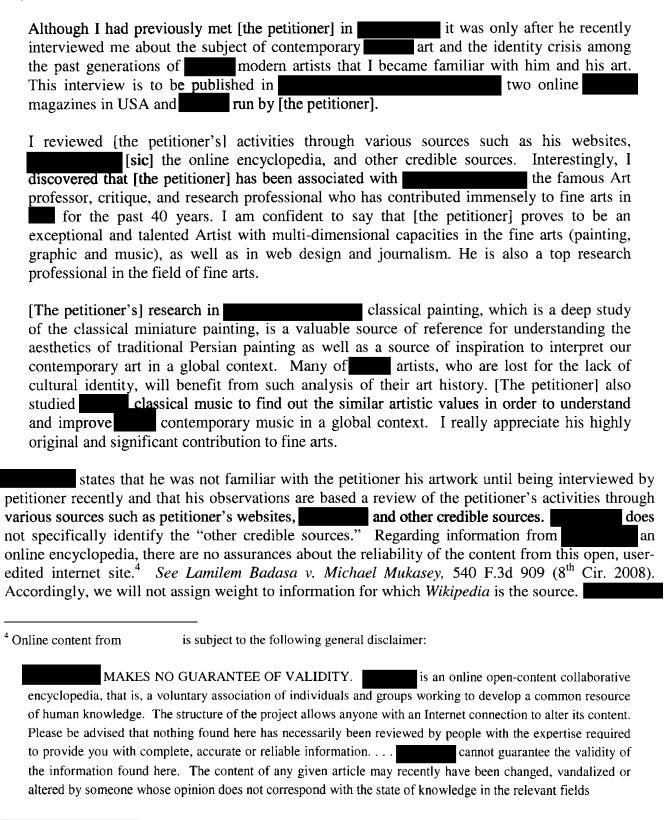
original value and significance to the fine arts field of endeavor.

together multiple languages of visual arts (painting, calligraphy, digital video and animation), music and poetry. This unique quality of [the petitioner's] ability contributes a highly





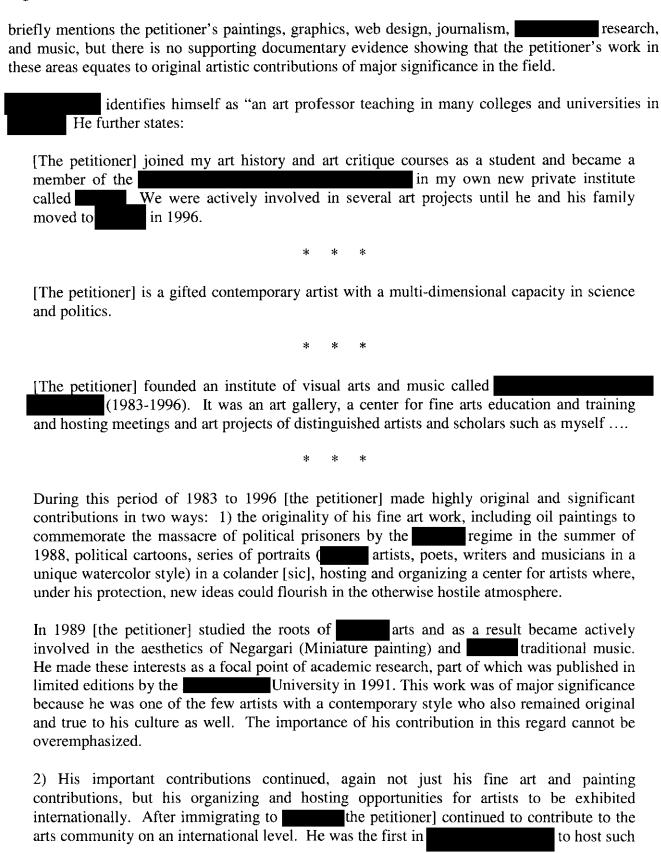




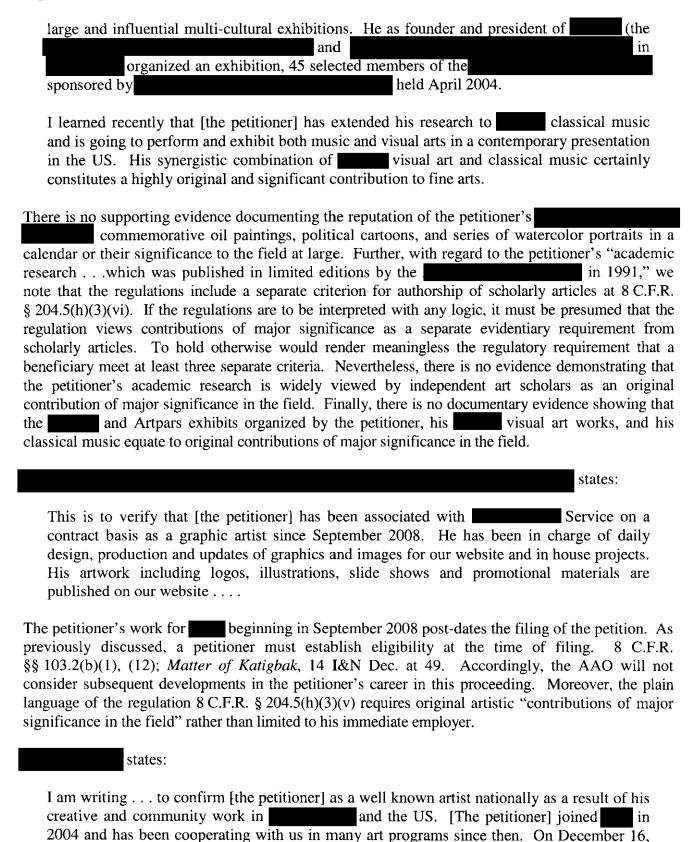
accessed on November 10, 2010, copy incorporated into

the record of proceeding.

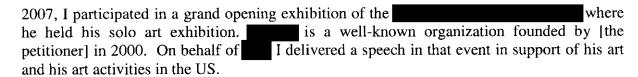












The petitioner's solo exhibition at the grand opening of his December 16, 2007 post-dates the petition's July 27, 2007 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 l&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's December 16, 2007 exhibition in this proceeding. Nevertheless, there is no evidence showing that his work equates to artistic contributions of major significance in the field.

On appeal, the petitioner submits what counsel vaguely identifies as "several original contributions selected for publication." The petitioner's submission includes a publication entitled bearing the dates

There is no evidence indicating the significance of this church publication or its circulation. Moreover, it appears to have been published subsequent to the petition's filing date and therefore cannot be considered in this proceeding. See 8 C.F.R. §§ 103.2(b)(1), (12); Matter of Katigbak, 14 I&N Dec. at 49. The petitioner also submits his artwork in the March 9, 2004 issue of and his ink drawings in a 1985 calendar. There is no evidence demonstrating the circulation of these printed documents or that they constitute original contributions of major significance in the visual arts field.

In addressing the petitioner's evidence for this criterion, the director's decision stated that the documentation submitted by the petitioner did not establish that his work could be considered contributions of major significance in the field, outside of those with whom he has worked or been associated. We concur with the director's finding. In this case, the record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted others in his field at large. For example, the record does not indicate the extent of the petitioner's influence on others in the visual arts field, nor is there specific documentary evidence in the record demonstrating that the field has significantly changed as a result of his work. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the respect and admiration of his references, there is no evidence demonstrating that his work is recognized beyond his personal acquaintances such that it equates to original contributions of major significance in the field.

We cannot conclude that the reference letters and the documentation pertaining to the petitioner's exhibitions and activities are sufficient to meet this criterion. The preceding letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See Matter of Caron International, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. Id. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility.

See id. at 795-796; see also Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of an artist who has made original contributions of "major significance." Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

states that the petitioner's "academic research . . . was published in limited editions by in 1991." The record, however, does not include documentary evidence of the petitioner's scholarly articles. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. Matter of Soffici, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that evidence of his scholarly articles do not exist or cannot be obtained. Further, letter does not equate to secondary evidence or an affidavit.

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted a self-serving "List of juried individual and group exhibitions in 1984-1996)." The self-serving claims in the petitioner's list are not sufficient to meet the burden of proof for this regulatory criterion. As stated previously, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R.



§ 103.2(b)(2)(ii). The petitioner has not established that evidence of his juried individual and group exhibitions in do not exist or cannot be obtained. Further, his self-serving list does not equate to secondary evidence or affidavits.

On appeal, the petitioner submits a promotional flyer announcing the December 16, 2007 Open House of his This event post-dates the petition's July 27, 2007 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's December 16, 2007 Artpars exhibition in this proceeding.

The petitioner has documented the exhibition of his work at his

Accordingly, the petitioner has established that he meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). However, certain deficiencies pertaining to this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

On appeal, counsel argues that the petitioner performs in a leading or critical role for the As previously discussed, the petitioner submitted documentation identifying him as founder, president, and a member of the board of directors of the but there is no evidence showing that the has a distinguished reputation in the arts. Moreover, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) expressly requires evidence that the alien has performed in a leading or critical role for "organizations or establishments" in the plural. Therefore, even if we found that the has a distinguished reputation, which we do not, a leading or critical role in a single distinguished organization does not meet the plain language of the regulation. Accordingly, the petitioner has not established that he meets this criterion.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the Kazarian opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a

"level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). See also Kazarian, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) – (viii).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the petitioner has not established that judging art exhibitions for the and performing his responsibilities as president of the demonstrate sustained national or international acclaim or a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). There is no evidence documenting the reputations of the and the art exhibitions involving the petitioner. Without supporting evidence demonstrating the significance and prestige of the events in which the petitioner participated as a judge of the work of others, we cannot conclude that his involvement was indicative of sustained "national or international acclaim" at the very top of the visual arts field.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(vii), it should be emphasized that a visual artist does distinguish himself as among that small percentage who have risen to the very top of the field simply by arranging for his work to be displayed. Moreover, the statute and regulations require the petitioner to demonstrate "sustained national or international acclaim" in his field of Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The petitioner has not established that displaying work at his in the from 2001 to 2003 and the r in $\overline{2007}$ demonstrates sustained national or international acclaim or a level of expertise indicating that he is among that small percentage who have risen to the very top of the field of endeavor. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3). In this case, there is no indication that the petitioner's works have consistently been featured along side those of artists who enjoy national or international reputations, that he has regularly participated in exhibitions at significant venues devoted primarily to the display of his work alone, or that his exhibited work has been singled out for critical acclaim beyond the local communities where he resided. The evidence submitted by the petitioner for 8 C.F.R. § 204.5(h)(vii) is not sufficient to demonstrate a level of distinction that sets his art exhibitions apart from those of most other artists in his field nationally or internationally.

While the petitioner has earned the respect and admiration of her references, the evidence of record falls short of demonstrating his sustained national or international acclaim as an artist. The conclusion we reach by considering the evidence to meet each criterion at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See Spencer Enterprises, Inc. v. United States, 229 F. Supp. 2d at 1043, aff'd, 345 F.3d at 683; see also Soltane v. DOJ, 381 F.3d at 145 (noting that the AAO conducts appellate review on a de novo basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.